

Approved For Release 2002/05/17 : CIA-RDP76M00527R000700140044-1

OLC 74-1545/a

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

5 SEP 1974

OGC Has Reviewed

~~20 AUG 1974~~

Mr. Wilfred H. Rommel
Assistant Director for Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Mr. William V. Skidmore

Dear Mr. Skidmore:

This is in response to your letter of July 17, 1974, requesting our comments on the latest alternate draft of H. R. 12206, dated July 12, 1974, and revised July 16, 1974. Subsequent to the receipt of this draft, Mr. William G. Phillips, Staff Director of the House Government Operations Subcommittee on Foreign Operations and Government Information, informed Mr. Carpentier of my office that there were additional changes. Mr. Phillips noted that a change affecting CIA was the subjecting of CIA to section (j)(2)(A), the court review provision. This would allow court review action concerning those sections from which the Agency is not exempted. The specific sections are as follows:

Section (b)(1)(A) through (E)

"(b) Each agency that maintains a system of records shall--

"(1) publish in the Federal Register at least once each calendar year a notice of the existence and character of such system of records, which notice shall include--

"(A) the name and location of each such system;

"(B) the categories of individuals on whom records are maintained in such system;

"(C) the categories of records maintained in such system;

"(D) the policies and practices of the agency regarding storage, retrievability, retention, or disposal of the records;

"(E) the title and business address of the agency official who is responsible for the system of records; and"

Section (d)(4) and (5)

"(4) not disclose any record or portion thereof, to any officer or employee of the agency, except to any officer or employee who has a need for such record in the performance of his duties within the agency, except in the case of records which by Federal statute or regulations issued thereunder are open to public inspection; and

"(5) not maintain any record concerning the political or religious belief, affiliation, or activity of any individual, unless expressly authorized by statute or the individual about whom the record pertains. "

We do not envision any problems from possible court action involving alleged Agency noncompliance with the above provisions except for section (d)(5). This section prohibits any agency from maintaining any record concerning the political or religious beliefs of any individual unless expressly authorized by statute or by the individual about whom the record pertains. "Political and religious" matters are of interest in the context of foreign intelligence. STATOHR

The Annual Report from the President to the Congress required by section (1) also presents a problem. The report is to include the number of records contained in any system of records which were exempted from the application of the provisions of the bill. Since this includes all records maintained by the Central Intelligence Agency, the furnishing of this information would not appear to meet the purposes of the report. [redacted] STATOTHR STATOTHR

[redacted]

STATOTHR [redacted] We request that the Agency be exempted from this requirement.

The exemption for Agency records provided for in section (f)(2), "maintained by the Central Intelligence Agency," could be interpreted to include only those records in the physical custody of the Agency, and that Agency records disseminated to and maintained by other agencies would not be exempt. To avoid any ambiguity we would urge that our exemption be revised to read as follows:

"(2) maintained or originated by the Central Intelligence Agency;"

We again appreciate the opportunity to comment on the draft and understand that you will submit our comments to the House Subcommittee on Foreign Operations and Government Information, Government Operations Committee. We further understand that Subcommittee Chairman Moorhead has introduced a clean bill, H. R. 16183, and that we will be given an opportunity to comment on that bill.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Distribution:

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1 - Subject file (H. R. 12206)
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OLC:PLC:cg (28 Aug 74)

*Att to
ole 74-1545*

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

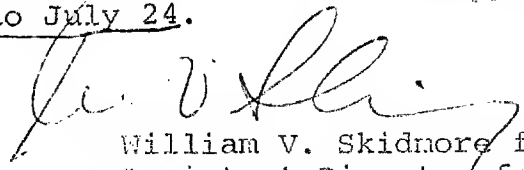
July 17, 1974

LEGISLATIVE REFERRAL MEMORANDUM

To: Legislative Liaison Officer
(See attached list.)

Subject: Draft privacy legislation

The staff of the House Subcommittee on Foreign Operations and Government Information has furnished us with a later version of their draft privacy bill to correct certain errors and inconsistencies in the earlier draft. Please substitute the attached draft for the one attached to my Legislative Referral Memorandum of July 15. The due date for comments is extended to July 24.


William V. Skidmore for
Assistant Director for
Legislative Reference

Attachment

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cc:

Mr. Shepard
Mr. Casselman
Mr. Buchen
Dr. Marik
Mr. Duncan
Mr. Ebner
Mr. Bedell
Mr. Haase

ISD:FSReeder:krq 7/17/74

[DISCUSSION DRAFT]

July 12, 1974

revised 7/16/74

93d Congress
2d Session

A B I L L

To amend title 5, United States Code, to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That
the Congress finds that--

(1) the privacy of an individual is directly affected by the extensive collection, maintenance, use, and dissemination of personal information by Federal agencies;

(2) the increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from any collection, maintenance, use, and dissemination of personal information;

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(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

(4) the right to privacy is a personal and fundamental right derived from the Constitution of the United States; and

(5) in order to insure the security of certain information systems, and to protect the privacy of individuals named in such systems, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination by Federal agencies of certain information.

(b) The purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring each Federal agency to--

(1) permit an individual to determine what records pertaining to him are collected, maintained, used, and disseminated by each such agency;

(2) permit an individual to prevent records pertaining to him obtained by each such agency for a particular purpose from being used or made available for another purpose without his consent;

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(3) permit an individual to gain access to certain Federal agency records pertaining to him, to have a copy made of all or any portion thereof, and to correct or amend such records;

(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information; and

(5) permit deviations from the requirements with respect to records provided in this Act in cases where there is an important public policy need for such deviation which has been determined by specific statutory authority.

In order to assure the rights of each individual under this Act, each individual may pursue civil relief in the Federal courts for any damages which occur as a result of willful or negligent action by any Federal agency which violates his rights under this Act.

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Sec. 2. Title 5, United States Code, is amended by adding after section 552 the following new section:

"§552a. Records maintained on individuals.

"(a) For purposes of this section--

"(1) the term 'agency' means agency as defined in section 552(e) of this title;

"(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

"(3) the term 'maintain' includes maintain, collect, use, or disseminate;

"(4) the term 'record' means any information about an individual that is maintained by an agency or by a contractor or grantee of the Federal Government/under the terms of a Government contract or grant;
for government purposes

"(5) the term 'system of records' means a group of any records under the control of any agency from which information could be retrieved by the name of the individual or by some identifying number or symbol assigned to each such individual; and

"(6) the term 'statistical reporting or research record' means a record in a system of records maintained for statistical purposes only and not used in making any determination about an identifiable individual, except as provided by section 8 of title 13,

"(b) Each agency that maintains a system of records shall--

*But FOI
proceeds*

"(1) publish in the Federal Register at least once each calendar year a notice of the existence and character of each such system of records, which notice shall include--

"(A) the name and location of each such system;

"(B) the categories of individuals on whom records are maintained in such system;

"(C) the categories of records maintained in such system;

"(D) the policies and practices of the agency regarding storage, retrievability, retention, or disposal of the records;

"(E) the title and business address of the agency official who is responsible for the system of records; and"

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"(F) the agency procedures whereby an individual can be notified if the system of records contains a record pertaining to him, can gain access to such record, and can contest its content; and

"(2) maintain procedures whereby an individual from whom information pertaining to him is requested is apprised of the purposes for which such information will be used.

"(c) No agency shall disseminate any record to any person not employed by such agency, or to another agency, except--

"(1) pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains;

"(2) when required pursuant to section 552(a) of this title, or by any other Federal statute;;

"(3) for a use described in any rule promulgated pursuant to subsection (h)(2);

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"(4) to another agency for a law enforcement activity if such activity is authorized by Federal statute and if the head of such agency has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record, or portion thereof, is sought;

"(5) to the Bureau of the Census for purposes of planning or carrying out a census or survey pursuant to the provisions of title 13, United States Code;

"(6) where the agency determines that the recipient of such record has provided advance adequate written assurance that the record, or any portion thereof, will be used solely as a statistical reporting or research record, and is in a form that is not individually identifiable; or

"(7) pursuant to a showing of compelling circumstances affecting the health, safety, or identification of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

"(8) when transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee

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"(d) Except as provided in subsections (f) and (g), each agency, with respect to each system of records under their control, shall--

"(1) maintain an accurate accounting of--

"(A) the date, nature, and purpose of each dissemination of a record, or any portion thereof, made to any person outside the agency or to another under subsection (c)(1) or (6) of this section; agency / and

"(B) the name and address of the person or agency to whom such dissemination is made;

"(2) retain the accounting made pursuant to paragraph (1) for at least two years after the dissemination for which such accounting is made;

"(3) make the accounting made pursuant to paragraph (1) available to the individual named therein at his request;

"(4) not disclose any record, or portion thereof, to any officer or employee of the agency, except to any officer or employee who has a need for such record in the performance of his duties within the agency, except in the case of records which by Federal statute or regulations issued thereunder are open to public inspection; and

"(5) not maintain any record concerning the political or religious belief, affiliation, or activity of any individual, unless expressly authorized by statute or the

individual about whom the record pertains.

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(over) [unclear]

"(e) Each agency shall--

"(1) upon request by any individual, permit such individual to gain access to any record pertaining to him contained in any system of records under the agency's control, and to have a copy made of ^{all or} any portion thereof;

"(2) permit such individual to request amendment of a record pertaining to him and either--

"(A) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

"(B) promptly inform such individual of its refusal to amend such record in accordance with his request, the reason for such refusal, the procedures established by the agency for the individual to request a review by the agency of that refusal, and the name and business address of the official within the agency to whom the request for review may be taken;

"(3) permit any such individual who disagrees with the agency's refusal to amend his record, to request review of such refusal by the official name in paragraph (2)(B); and, if after such review, that official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the agency's refusal;

"(4) in any disclosure relevant to such individual's disagreement occurring after the filing of the statement under paragraph (3), clearly note any portion of such record which is disputed and provide copies of such statement and, if the agency deems it appropriate, copies of a concise statement of the agency's reasons for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

"(5) inform any person or other agency about any correction made by the agency of any record that has been disclosed to such person or agency within two years preceding the making of such correction of the individual's record, except that this paragraph shall not apply to any record, or any portion thereof, that was disclosed prior to the effective date of this section and for which there is no accounting of such disclosure.

NOT DISCLOSE
NOT MAINTAIN
"(f) Except as provided in subsections (b), (A) through (E), (d)(4), and (d)(5) the provisions of this section shall not apply to any system of records--"
(1) System
but FOI?

"(1) maintained by any agency to the extent that the President determines by Executive Order, on an annual basis, that providing access by an individual to his records would cause serious damage to the national defense or foreign policy; or

"(2) maintained by the Central Intelligence Agency; or

"(3) maintained by any agency for law enforcement purposes.

"(g) The head of any agency may, following a written determination setting forth his reasons and publication of notice of such determination in the Federal Register, exempt any system of records, or any portion thereof, from any part of subsection (b)(1)(F), (b)(2), (c), (d)(1), (2), or (3), (e), or (j)(1)(A) or (2) if such system of records, or any portion thereof, is--

"(1) subject to the provisions of section 552(b)(1) of this title;

"(2) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18, United States Code;

*How are
These at the
Access exemption
subject (h)
grays*

Why not (b)(3)?

"(3) investigatory material compiled or used for the purpose of determining initial or continuing eligibility or qualification for Federal employment, military service, Federal contracts, or access to classified information;

"(4) material used for appointment, employment, or promotion in the Federal service which could adversely affect the objectivity of the appointment, employment, or promotion process; or

"(5) authorized by statute to be maintained and used solely as statistical reporting or research records.

"(h) In order to carry out the provisions of this section, each agency shall promulgate rules in accordance with the requirements, including that of general notice, of section 553 of this title. Such rules--

"(1) shall define reasonable times, places, and requirements for identifying individuals who request records pertaining to themselves before the agency shall make such records available to such individuals;

"(2) shall provide a description of each routine purpose for which records pertaining to identifiable individuals is used or intended to be used, including the categories of users of any such record for each such purpose;

"(3) shall establish procedures for reviewing requests from individuals concerning the amendment of records pertaining to such individuals, for making a determination on such requests, for appeals within the agency of initial adverse agency determinations, and for whatever additional means the head of the agency may deem necessary for each individual to be able to exercise fully his rights under this section;

"(4) shall provide that any record which is used by the agency in making any determination about any individual is maintained with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness to the individual in such determination;

"(5) shall establish procedures for the disclosure to an individual upon his request of medical records pertaining to him, including psychological records; and

"(6) may establish fees to be charged to individuals for making copies of their records, or any portion thereof, excluding the cost of review or of any search for such records.

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"(i)(1) Agency records which are accepted by the Administrator of General Services for deposit with the National Archives of the United States in accordance with section 3103 of title 44, United States Code, shall, for the purposes of this section, be considered to be maintained by the agency which deposited the records and shall be subject to the provisions of this section. The General Services Administration shall not disclose such records, or any information therein, except to the agency which maintains the records or pursuant to rules established by that agency.

*I also
checked?
yes*

"(2) Agency records pertaining to identifiable individuals which were transferred to the National Archives prior to the effective date of this section shall not be subject to the provisions of this section.

"(3) Agency records pertaining to identifiable individuals which are transferred to the National Archives on or after the effective date of this section shall be subject to all provisions of this section except paragraphs (b)(1)(F); (b)(2); (e)(2) through (5); (h)(2); (j)(1)(B) and (C); and (j)(3).

"(j)(1) Whenever any agency (A) refuses to comply with any individual request under subsection (e)(1) of this section, (B) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to such individual's qualifications, character, rights, opportunities, or benefits that may be made on the basis of such records and consequently make such a determination which is adverse to the individual, or (C) fails to comply with any other provision of this section in such a way as to have an adverse effect on an individual, such individual may bring a civil action against such agency, and the district courts of the United States shall have jurisdiction in such matters as provided by paragraph (4) of this subsection.

"(2)(A) In any suit brought pursuant to the provisions of subsection (j)(1)(A), the court may enjoin the agency from withholding the records and to order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether such records or any portion thereof may be withheld under any of the exemptions set forth in subsection (g) of this section, and the burden is on the agency to sustain its action.

(B) or (g) why?

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"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

"(3) In any suit brought pursuant to the provisions of subsection (j)(1) in which the court determines--

"(A) that the agency's refusal or failure has been willful, the agency shall be liable to the individual in an amount equal to the sum of--

"(i) actual damages sustained by the individual as a result of such refusal or failure;

"(ii) punitive damages allowed by the court; and

"(iii) the costs of the action together with reasonable attorney's fees as determined by the court; or

"(B) that the agency's refusal or failure has been negligent, the agency shall be liable to the individual in an amount equal to the sum of--

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"(i) any actual damages sustained by the individual as a result of such refusal or failure; and

"(ii) the costs of the action together with reasonable attorney's fees as determined by the court.

"(4) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to the establishment of the agency's liability to that individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

"(k)(1) Any officer or employee of the United States, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable material the disclosure of which is prohibited by this section or by rules or regulations established pursuant thereto, and who knowing that disclosure of such specific material is so prohibited, willfully discloses such material in any manner to any person or agency not entitled to receive it, shall be fined not more than \$5,000.

"(2) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be fined not more than \$5,000.

"Annual Report

"(1) The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section pursuant to the provisions of subsection (f) and (g) of this section during the preceding calendar year, and the reasons for such exemptions, and such other information as indicates efforts to administer fully this section.

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"(m) For the purposes of subsections (c)(1), (e), or (j) of this section, the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of such individual."

Sec. 3. The chapter analysis of chapter 5 of title 5, United States Code, is amended by inserting:

"552a. Records about individuals."

immediately below:

"552. Public information; agency rules, opinions, orders, records, and proceedings."

Sec. 4. The amendments made by this Act shall become effective on the one-hundred eightieth day following the date of enactment of this Act, except that the amendments made with respect to section 552a (h) of title 5, United States Code, shall become effective on the date of enactment of this Act.